

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Petition of Green Mountain Power Corporation, Vermont )  
Electric Cooperative, Inc., and Vermont Electric Power )  
Company, Inc., for a certificate of public good, pursuant to 30 ) Docket No. 7628  
V.S.A. Section 248, to construct up to a 63 MW wind electric )  
generation facility and associated facilities on Lowell Mountain )  
in Lowell, Vermont, and the installation or upgrade of )  
Approximately 16.9 miles of transmission line and Associated )  
substations in Lowell, Westfield and Jay, Vermont )

REPLY MEMORANDUM  
OF THE VERMONT AGENCY OF NATURAL RESOURCES

The Vermont Agency of Natural Resources (ANR) files the following response to the Proposal for Decision filed by GMP, and the Proposed Findings and Briefs of Intervenors, Lowell Mountain Group, the Towns of Albany-Craftsbury, and the Green Mountain Club.

INTRODUCTION

With the many mitigation measures outlined in GMP-ANR-1, ANR has recommended that the project will not result in an undue adverse impact to the natural environment. Although ANR shares some of the concerns raised by the intervenors, ANR is convinced that the easements, restoration, vegetation management plans, and amended decommissioning plan, all of which will require the approval and participation of ANR, will sufficiently mitigate the adverse impacts so that they are no longer undue.

If the Board were to issue a Certificate of Public Good for the Project, regarding the natural resource criteria of 30 V.S.A. § 248, ANR respectfully requests that the Board adopt the findings and conditions recommended by ANR.

ANR responds to specific findings and issues raised in the briefs of the Parties as follows:

I. ANR's response to proposed findings of fact of GMP

- 1) GMP Findings ##341, 354: GMP asserts that the Project will not adversely impact bear habitat. GMP offers that the Project will not "destroy" necessary wildlife habitat.

The testimony of John Austin and the stipulation of GMP and ANR belie this assertion. GMP has conceded through the execution of the stipulation with ANR, GMP-ANR1, that the project absent the mitigation required in the stipulation will result in an undue adverse impact to the natural environment.<sup>1</sup> Regarding impacts to bear habitat, the stipulation specifically provides that "[t]he Parties agree that the mitigation outlined below is adequate to offset what would otherwise be undue adverse effects of the Project on black bear scarred beech habitat."<sup>2</sup>

Bear scarred beech habitat is necessary black bear habitat.<sup>3</sup> The project will result in direct and indirect impacts to approximately 146 acres of bear scarred beech habitat.<sup>4</sup> The project will destroy and permanently remove approximately 20.7 acres of bear scarred beech habitat.<sup>5</sup>

---

<sup>1</sup> GMP-ANR #1, at 1.

<sup>2</sup> GMP-ANR 1.

<sup>3</sup> See Proposed Finding 197

<sup>4</sup> See ANR Proposed Findings 203, 204; Austin pf direct at 10; Tr. 2/7/2011, at 158 (Austin).

GMP has also requested that the Board incorporate the Stipulation into any Certificate of Public Good issued for the Project. The Board, accordingly, should find that the Project, absent the mitigation required in Paragraph 2 of the stipulation, the Project will result in an undue adverse effect to black bear habitat.

2) Findings #'s 347; 348; and 351: GMP makes reference to “a” conservation easement.

The stipulation anticipates and requires that GMP secure “conservation easements.” More than one parcel is anticipated and required under the stipulation. <sup>6</sup>ANR believes GMP “easement: should be plural.

3) Finding #369: GMP asserts the magnitude of impacts on breeding birds is expected to be low.

Contrary to GMP’s claim there will be a shift in the breeding bird communities away from those that favor interior species and toward more forest edge species. <sup>7</sup> There will be a shift in breeding bird communities that involve reduced numbers of some area sensitive bird species such as wood thrush to species that tolerate or require edge habitat such as blue jays<sup>8</sup>

---

<sup>5</sup>See ANR Finding 197. Austin direct pf. at 9; ANR-JMA-2 at 3; PET-JAW 2.

<sup>6</sup> See ¶3.2.

<sup>7</sup> See ANR Proposed Findings 283-290.

<sup>8</sup> . Austin direct pf at 19.

4) Finding #407: In detailing the requirements of the Decommissioning Plan, GMP omits the agreement to develop more enhanced restoration on non-Landowner ridgeline property at the time of decommissioning. The site restoration work would involve more aggressive recontouring to return the area to a site condition that resembles a ridgeline. The goal for these enhancements is to facilitate the return of the ridgeline to a natural and undeveloped condition and to discourage future development in this area.<sup>9</sup>

5) ANR Response to GMP Estimated incremental cost of GMP-ANR stipulation

There are several references on the Easements and Construction Activities that are not accurate or appear in the wrong location:

The Post construction Invasive Species Monitoring Plan requires such a plan for up to ten years. See GMP-ANR-1, at ¶ 6. The estimate includes this description but only for 5 years. Because there is no separate line item for this or the other requirements it is difficult to determine whether the error is material.

Decommissioning. The parties drafted carefully the stipulation language regarding the plans for the planting of revegetation after decommissioning. The requirements for such a plan will be developed at the time of decommissioning, not now. Accordingly, the stipulation does not prescribe the plan for “the planting of vegetation in the prepared substrate” after scarification and turbine pads. Indeed, the parties did not agree on the type of vegetation required. The specific inclusion of “a mixed grass seed” in the cost estimate suggests that the predominant method of revegetation will be by grass seed. ANR has recommended planting of trees for the site and

---

<sup>9</sup> GMP-ANR #1 at ¶4.10; Tr. 2/24/2011 at 209 (Sorenson) .

GMP has recommended grass seed. Regardless, the decision of plantings of trees should be made at the time of decommissioning. ANR has conferred with GMP regarding this description and both agree that the language of the stipulation GMP-ANR-1 shall control the requirements for the “planting of vegetation in the prepared substrate” as required under ¶ 4.4 of GMP-ANR-1. Nothing in the cost estimate should influence or control the selection of plantings at the time of decommissioning.

The Ridgeline Easement is listed in the decommissioning section of the estimate. The stipulation provides that “[t]he Ridgeline Easement shall be conveyed prior to commercial operation of the Project.” ANR has consulted with GMP and understands that although GMP will acquire the ridgeline easement before construction, the financial impact of the acquisition, and the burden on the property owner, will occur after the Project ceases operation.

## II. ANR’s Response to the Lowell Mountain Group

LMG and others are concerned with the absence of monitoring and the enforceability of the provisions of the stipulation. Both ANR and GMP recommend that the terms and conditions of the stipulation be incorporated into any CPG issued for the project. The Board, ANR, and any Intervenor can seek to enforce the terms of the CPG. In addition, as part of any easement, ANR will seek an enforcement provision which will award the costs of non-compliance, including attorneys’ fees and costs to ANR.

1) Findings #59, #123#140: GMP has not addressed all of ANR’s concerns because the entire ridgeline will not be protected and the natural communities will be impacted.

As indicated in the hearing testimony of ANR witness Eric Sorenson, with the mitigation parcels and the restoration measures required by the stipulation, although the Project will result in an adverse impact, the impacts will no longer be undue.<sup>10</sup> The stipulation creates a ridgeline easement on those areas owned by Landowner. For those areas not owned by Landowner, the stipulation contemplates a more aggressive restoration plan. The combination of the ridgeline easement and restoration plan will prevent the development risks to the ridgeline.<sup>11</sup>

2) Findings #60, 124: LMG asserts that the stipulation fails to ensure that any conservation easement will take precedence over any other encumbrance on the property.

ANR will be negotiating the terms of the easements executed in fulfillment of the stipulation. ANR will require that any mortgage or other interest in the property be subordinate to the easements required by the stipulation.

3) Finding#372: The impact to the MSFF is still undue.

During the hearing, Eric Sorenson summarized his prefiled testimony and indicated that “the combined effects of all the adverse effects” of the Project “add up to an undue adverse effect if they are not mitigated for.”<sup>12</sup> Mr. Sorenson in his prefiled rebuttal testimony outlined the mitigation steps he recommended. In his hearing testimony, Mr. Sorenson concluded that with the stipulation in place, the impacts of the Project still exist, but they are no longer undue.”<sup>13</sup>

4) Finding #84: LMG asserts that the project should be limited to seven acres of concurrent earth disturbance.

---

<sup>10</sup> Tr. 2/24/2001, at 195 (Sorenson)

<sup>11</sup> Tr. 2/24/2011, at 199, 209, 214-25 (Sorenson ).

<sup>12</sup> Tr. 2/24/2011, at 194 (Sorenson).

<sup>13</sup> Tr. 2/24/2011, at 194-95 (Sorenson).

As indicated by the testimony of Kevin Burke, the project will be subject to the additional oversight and mitigation measures of an individual permit. Although a project authorized under a general permit is limited to seven acres of concurrent disturbance, the additional measures required by an individual permit allow for additional areas of concurrent disturbance.<sup>14</sup>

5) Finding #125 Petitioners and ANR have failed to specify details about the easements that will be preserved including acreage and the values that will be preserved compared to those that will be impacted by the project.

The stipulation was prepared in response to the concerns raised by ANR about the impacts of the project to bear scarred beech habitat, significant natural communities, and fragmentation. The values to be preserved by the bear habitat mitigation parcels are bear habitat, specifically bear scarred beech. In addition to beech, Parcel 3 also contains wetlands that will be preserved that serve as habitat to black bear.

Mr. Sorenson's rebuttal testimony outlines the goal and measure for the fragmentation-connectivity easements. The goal of the parcels is to maintain functional connectivity between the large Lowell Mountain habitat block. Mr. Sorenson offered the purpose of the parcels and the selection of the parcels will be evaluated against that purpose.<sup>15</sup>

6) Finding #131, 132, 146, and 147: The bear parcels are inadequate and the stipulation allows for uncontrolled logging or cutting of BSB habitat.

---

<sup>14</sup> Tr. 2/24/2011, at 172 (Burke). For additional mitigation measures required for the individual permit, see pages 185-189 (Burke).

<sup>15</sup> Tr. 2/24/2011, at 201 (Sorenson).

The goal is to identify areas where there are sections of road that don't have houses on them and have adequate cover up to the edge of the road so that those areas can continue to be a place where animals move, where species shift over time, and the goal is really to prevent those areas from becoming degraded as I think they would if they were developed.

*Id.*

The bear mitigation parcels consist of three parcels, two of which will be held in perpetuity. Parcel 1 will be subject to a conservation easement of limited term. The duration of the term is for a period longer than originally proposed by GMP. The term extends for as long as the Project and decommissioning extends plus twenty-five years. The 292 acres conserved will be preserved for the duration of the project and for twenty-five years beyond the decommissioning phase of the project. Although the easement is not permanent, its duration during the life and for twenty five years beyond decommissioning, in combination with the restrictions on the land-use during the easement term will help offset the undue adverse effects of the Project on black bear scarred beech habitat. <sup>16</sup>The two other bear parcels, Parcels 2 and 3, will be held in perpetuity.

LMG asserts that bear scarred beech can continue to be cut without limitation. The stipulation provides that Parcels 1 and 2 will be subject to “a forestry and wildlife habitat management plan” which “shall be reviewed and approved by ANR and submitted to the Board for final approval prior to construction of the Project.” Any landowner logging on the parcels must be consistent with forestry and wildlife habitat management Plan which must “ensure the proper stewardship and enhancement of the bear habitat features” on the Parcel. <sup>17</sup> The bear habitat features that are to be enhanced on the parcels include the bear scarred beech habitat located on the Parcel. Mr. Austin testified about the purpose and utility of a habitat stewardship plan. Such a plan establishes “the criteria and the guidelines by which the area will be managed” and “gives the public some assurance that this area that’s being set aside, offset these impacts, is

---

<sup>16</sup> GMP-ANR 1 ¶2.1.

<sup>17</sup> GMP-ANR 1 ¶2.1.2 .a; 2.2.2.a.



going to be managed in such a way that the habitat will continue to function well into the future.”

<sup>18</sup> It would be antithetical to such a plan to allow beech trees to be cut without limitation.

Regarding Parcel 3, commercial logging of timber is prohibited. Any timber management shall be conducted only at the discretion of ANR. If timber management were allowed it would need to ensure the enhancement of the bear habitat features on the Parcel.

III. ANR response to Albany-Craftsbury proposed findings and brief

1) Findings generally 32-136. ANR agrees that the project will cause fragmentation of

the habitat of the Lowell Mountain Block, but has recommended that the proposed mitigation in GMP-ANR 1 will offset those effects.

2) Findings 139, 141 and Discussion generally. Albany- Craftsbury are concerned that the connectivity easements have yet to be secured and that the Board lacks the requisite information upon which it can evaluate the adequacy of the easement parcels to offset the undue adverse impacts of the project.

ANR has provided testimony on the fragmenting impacts of the project and offered testimony on how those impacts may be mitigated. Eric Sorenson has provided prefiled and hearing testimony that outlines the general location and purpose of the connectivity parcels. “The main purpose of this proposal is to maintain the existing habitat connectivity between the Lowell Mountain habitat block and the large habitat block to the south that includes Green River Reservoir State Park.” <sup>19</sup> ANR and GMP have recommended that the connectivity easements will offset the fragmenting effects of the project. Mr. Sorenson has testified that with the

---

<sup>18</sup> Tr. 2/07/2011, at 174 (Austin).

<sup>19</sup> See Sorenson pf. surrebuttal at 16-17; Tr. 2/24/2011, at 200-01 (Sorenson)

connectivity parcels and the other mitigation requirements of GMP-ANR-1, the Project will not result in an undue adverse impact on the natural environment. The information provided is sufficient to allow the Board to determine whether connectivity parcels that meet the goals outlined by Mr. Sorenson/ANR can mitigate for the fragmenting effects of the Project.<sup>20</sup> That the selection of the actual parcel that meets this goal has yet to occur does not prevent the Board from reaching a decision on whether these effects can be mitigated by connectivity parcels.

Albany Craftsbury are also concerned that the MOU defers to ANR the authority to decide whether the project will result in an undue adverse impact to the natural environment. The stipulation makes no such representation. Instead, through the stipulation, the Parties, GMP and ANR recommend that the Board incorporate the stipulation and its requirements into any CPG issued for the Project. It remains for the Board to conduct its analysis under 30 V.S.A. §248 (b) (5) to determine whether the Project will result in an undue adverse impact to the natural environment. The Board alone must determine whether connectivity easements as outlined by ANR can mitigate for the fragmenting effects of the Project.

3) Finding #138, 140: The MOU does not address degradation of the MSFF to the degree that it is no longer state significant. The MOU does not address all of Mr. Sorenson's concerns.

Mr. Sorenson testified "that the combined effects of all the adverse effects add up to an undue adverse effect if they are not mitigated."<sup>21</sup> Mr. Sorenson also testified that the mitigation

---

<sup>20</sup> Obviously, the Board must first decide whether the project will result in fragmenting impacts that will have an undue adverse impact on the natural environment before it turns to its mitigation analysis.

<sup>21</sup> Tr. 2/24/2011, at 194 (Sorenson).

that has been provided renders the impacts “adverse but not undue.”<sup>22</sup> The ridgeline easement is intended to offset the impacts to the MSFF. Mr. Sorenson testified that the easement is needed to ensure long-term restoration of the ridgeline.<sup>23</sup> The ridgeline easement will be permanent.<sup>24</sup> The areas not covered by the permanent easement would be subject to more robust site restoration and recontouring. These additional measures would discourage future development on the ridgeline.<sup>25</sup>

The sum of the many mitigation measures and easements required in GMP-ANR-1 renders the impacts of the project no longer undue.

4) Finding # 157: PSB cannot approve the project prior to issuance of permits.

The Board routinely requires as CPG conditions that a petitioner obtain all necessary state and federal permits for a project.<sup>26</sup> The Supreme Court has upheld the use by the Board of post-certification procedures.<sup>27</sup>

IV. GMC proposed findings and brief

1) Findings 321-331

In addition to some of the concerns outlined above, GMC finds fault with the GMP-ANR-1 stipulation because it does not require revegetation and removal of the access road and

---

<sup>22</sup> Id. at 195.

<sup>23</sup> See Sorenson pf. surrebuttal at 14.

<sup>24</sup> See GMP-ANR-1 ¶3.1.2.b. Future development on the ridgeline will be restricted except for a future renewable energy or telecommunications project. Any future energy project must file its petition for project approval before GMP ends Project commercial operations and must contain a “decommissioning and site restoration plan that is at least as stringent and protective and contain at a minimum those protections and restrictions outlined and required by this Stipulation.” GMP-ANR-1 ¶3.1.2.a.

<sup>25</sup> See Tr. 2/24/2011, at 199, 209-10 (Sorenson).

<sup>26</sup> See Docket No. 7250, CPG ¶ 3. “Deerfield shall obtain all necessary permits and approvals for the Project.”

<sup>27</sup> *In re Amended Petition of UPC Vermont Wind, LLC, for a Certificate of Public Good, Pursuant to 30 V.S.A. § 248, et. al.*, 2009 VT 19, ¶ 7; *Petition of Vermont Electric Power Company, Inc.*, 131 Vt. 427, 435 (1973 ).

stormwater features. As an initial matter, the post construction revegetation management plan required by the stipulation also applies to the access road. The side slopes will be revegetated upon construction.<sup>28</sup>

Because the access road will remain after the life of the project, the stormwater management features needed to treat the stormwater runoff from the impervious surface will need to stay.<sup>29</sup>

GMC suggests that the details of GMP-ANR-1 must be resolved before the Board can make its undue adverse impact determination and relies on ANR witness Mr. Sorenson as supporting this proposition. Mr. Sorenson did not offer that the details were needed in order to determine *if* undue adverse impacts will occur. As outlined above, the Board can make that determination based upon the evidence presented including GMP-ANR-1. Mr. Sorenson testified, consistent with the stipulation, that if the requirements imposed under GMP-ANR-1 are not met, the project will result in an undue adverse impact.<sup>30</sup>

2) Findings #321, 323. GMC contorts Mr. Sorenson's candor about his unfamiliarity with the Public Service Board process and procedures in its finding.

Mr. Sorenson did not testify that ANR is "not sure about the overall process." Instead, in response to questioning by Mr. Margolis on whether "we [his clients or Intervenor] [are] going to have an opportunity to review the work" on the connectivity parcels.<sup>31</sup>

---

<sup>28</sup> GMP-ANR-1 ¶5.1.

<sup>29</sup> See Burke pf. at 12.

<sup>30</sup> Tr. 2/24/2011, at 206-207.

<sup>31</sup> Tr. 2/24/2011, at 202 (Sorenson).

Similarly, the framework statement relates to the various specific plans, including site restoration and invasive species monitoring, that have yet to be developed.<sup>32</sup>

### CONCLUSION

For the reasons stated above and in its Proposed Findings of Facts and Conclusions, ANR respectfully requests that if the Board were to issue a CPG for the Project that it incorporate the conditions recommended by ANR and the requirements of GMP-ANR-1.

Respectfully submitted this 4<sup>th</sup> day of April, 2010 at Waterbury, Vermont.

State of Vermont  
Agency of Natural Resources

BY: \_\_\_\_\_

Judith L. Dillon, Esq.  
103 S. Main Street, Center Bldg.  
Waterbury, Vermont 05671-0301

---

<sup>32</sup> See Tr. 2/24/2011, at 206-07 (Sorenson)